

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas Holman
Bankruptcy Judge
Modesto, California

January 20, 2004 at 1:30 p.m.

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| 1. 03-93703-A-13 RALPH PIZZI
CWN #1
FAIRBANKS CAPITAL CORP. VS. | HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/24/03 [33] |
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CASE DISMISSED EOD 12/16/03

Disposition Without Oral Argument: The motion is denied as moot because debtor voluntarily dismissed this case on December 16, 2003.

The court will issue a minute order.

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| 2. 02-91304-A-13 RICHARD & JULIE COLE
JHV #1
UNITED HOME LOAN VS. | HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART III
12/24/03 [70] |
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Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this matter.

The motion is denied without prejudice, pursuant to LBR 9014-1(l). No monetary sanctions are imposed.

This motion fails to comply with, inter alia, LBR 4001-1(c) (requiring an information sheet be filed with all motions seeking relief from the automatic stay); LBR 4001-1(d)(1)(i) (requiring a post-petition payment history be filed with all motions seeking relief from the automatic stay); LBR 4001-1(d)(1)(ii) & (iii) (requiring the motion to state whether certain requirements exist in the loan documents and if they have been met); LBR 9014-1(d)(5) (requiring all motions cite the legal authority relied upon by the moving party); and LBR 9014-1(d)(6) (requiring that all motions be accompanied by evidence establishing the factual allegations contained therein).

The court notes that this motion has been filed pursuant to "LBR 4001-1 Part III." There have been no Part III motions since the court amended the Local Bankruptcy Rules on December 23, 2002. A copy of the current local rules of this court is available on the internet, free of charge, at <http://www.caeb.uscourts.gov>.

The court will issue a minute order.

3. 02-92108-A-13 DAVID & BARBARA STROTH HEARING ON MOTION FOR
DRW #1 RELIEF FROM AUTOMATIC STAY
HOUSEHOLD FINANCE CORPORATION 12/22/03 [40]
OF CALIFORNIA VS.

WITHDRAWN 1/5/04

Disposition Without Oral Argument: The moving party withdrew this matter on January 5, 2004. It is removed from the calendar.

4. 02-92509-A-13 GARY & PAULA BOTELHO HEARING ON RESTORED
WGM #1 MOTION FOR RELIEF FROM
AUTOMATIC STAY ON REAL
PROPERTY AFTER DEBTORS'
BREACH OF ADEQUATE
PROTECTION ORDER ENTERED
ON AUGUST 12, 2003
12/24/03 [37]

Tentative Ruling: The motion is granted in part; adequate protection is ordered as set forth below.

Termination of the automatic stay under 11 U.S.C. § 362(d)(2) is inappropriate because the value of the subject real property exceeds the total of the liens. There is equity (\$41,842.47) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984). Relief under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a plan on November 20, 2002. That plan provides for payment of the pre-petition arrears through the plan. There is no evidence that the plan payments are in default. The debtors' opposition states that the alleged missed payments were made on October 29, 2003 and December 30, 2003 and provides receipts from movant's servicing agent, Washington Mutual Bank. After confirmation, the only ground for relief from the automatic stay is a breach of the confirmed plan. In re Evans, 30 B.R. 530 (9th Cir. B.A.P. 1983). Because of the debtors' payments, the plan is not in default.

Adequate protection is ordered as follows: The restoration provision in the August 12, 2003 Adequate Protection Order is extended through and including October 31, 2004 subject to the procedures contained therein.

Counsel for the movant shall submit an order that conforms to the court's ruling.

5. 03-90712-A-13 MONTE & KIMBERLY ELLIOTT HEARING ON MOTION FOR
JEG #3 RELIEF FROM AUTOMATIC STAY
BANK OF STOCKTON VS. 12/15/03 [47]

CASE DISMISSED EOD 12/17/03

Disposition Without Oral Argument: The motion is denied as moot because the case was dismissed on December 17, 2003.

The court will issue a minute order.

6. 03-92613-A-13 DAVID & HOLLY RICH
SML #1
WASHINGTON MUTUAL BANK VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
OR IN THE ALTERNATIVE, FOR
ADEQUATE PROTECTION
12/24/03 [30]

Tentative Ruling: This motion is filed under LBR 9014-1(f)(2). The notice of hearing is defective where it states inconsistent dates for the hearing on this matter. The captions state the motion is to be heard January 20, 2004 but the body of the notice states the hearing is on February 3, 2004. However, the defect is waived because the debtors have filed written opposition acknowledging the January 20, 2004 hearing date. The court issues no tentative ruling on the merits of the motion.

7. 01-93215-A-13 MADELINE HINOJOS
KK #1
GREEN TREE SERVICING, LLC VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/22/03 [29]

Tentative Ruling: As it pertains to movant's interest in the subject real property, the automatic stay is modified effective at 12:01 a.m. on March 1, 2004 pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The court confirmed a plan on October 30, 2001. The plan requires that the post-petition note installments be paid directly to the movant. Movant alleges without dispute that the debtor has failed to make at least four (4) post-petition payments. Failure to make regular monthly payments to a secured creditor as required by a confirmed chapter 13 plan can constitute cause to terminate the stay under § 362(d)(1). See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985).

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed and \$150.00 in costs. These fees and costs may be enforced only against the movant's collateral.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

8. 01-93215-A-13 MADELINE R. HINOJOS
HWW #1
MADELINE R. HINOJOS VS.
AT&T BROADBAND, INC./NORTHERN
CALIF. COLL. SERV., INC. OF
SACRAMENTO, ASSIGNEE OF RECORD

HEARING ON MOTION TO
AVOID JUDICIAL LIEN
12/23/03 [42]

Tentative Ruling: The failure of the any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). However, in this instance the court will issue a tentative ruling.

The motion is denied. Debtor seeks neither avoidance under 11 U.S.C. § 522(f)(1)(A) nor sanctions for willful violation of the automatic stay under 11 U.S.C. § 362(h). Instead, Debtor seeks a determination regarding the validity of a lien allegedly recorded against her real property in violation of the automatic stay. This requires an adversary proceeding. Fed. R. Bankr. P. 7001(2) & (9).

The court notes that a creditor who violates the automatic stay has an affirmative duty to rescind its actions and that failure to do so itself constitutes a violation of the automatic stay. Eskankos & Adler v. Leetien, 309 F.3d 1210 (9th Cir. 2002) (creditor with knowledge of a bankruptcy petition willfully violated the automatic stay by failing to dismiss its post-petition collection action against the debtor).

The court further notes that this lien is not avoidable under 11 U.S.C. § 522(f)(1)(A) because it is based on a post-petition debt not subject to discharge. See Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 51.1, n.3 (2000 & Supp. 2002) citing Castle v. Parrish, 29 B.R. 869, 874, (Bankr. S.D. Ohio 1983) ("From a functional analysis, since the claim survives the discharge to be entered upon consummation of payments rendered (sic) the chapter 13 plan, avoidance of the judgment lien would serve no purpose other than to jeopardize the priority of the Plaintiff's existing lien upon filing after the stay has been lifted.")

Counsel for debtor shall submit an order that conforms to the court's ruling.

9. 01-93215-A-13 MADELINE R. HINOJOS
HWW #2

HEARING ON MOTION TO
VALUE COLLATERAL OF THE
U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT
12/23/03 [37]

Tentative Ruling: This matter involves disputed facts that cannot be resolved on declarations. The parties shall be prepared to discuss on January 20, 2004: (1) a discovery schedule, if necessary; and (2) an evidentiary hearing date.

Tentative Ruling: The motion is granted to the extent set forth herein. The debtor owns real property located at 6509 Kermit Lane, Stockton California ("the Property"). The debtor seeks to sell the Property to Chetmesa Michelle Nop for \$160,000.00 free and clear of "any and all liens and interests." The court can only authorize a sale free and clear of a lien or interest if the debtor establishes one or more of the bases set forth in 11 U.S.C. § 363(f) with respect to the lien or interest. Furthermore, the court cannot either statutorily or constitutionally authorize a sale free and clear of a lien or interest the holder of which did not receive sufficient notice of the sale to enable it to object. 11 U.S.C. § 363(b); In re Center Wholesale, Inc., 759 F.2d 1440, 1448-49 (9th Cir. 1985); In re Moberg Trucking, Inc., 112 B.R. 362 (9th Cir. BAP 1990).

The debtor seeks to sell free and clear of several identified claims or possible liens on the property. These include:

1. A first deed of trust in favor of Conseco Finance Corp in the approximate amount of \$103,614.58. The debtor proposes to satisfy this lien through escrow on the property. Furthermore, Conseco received notice of this motion and did not oppose. A "lack of objection (provided of course there is notice) counts as consent." Futuresource, LLC v. Reuters Limited, 312 F.3d 281, 285 (7th Cir. 2002). The court finds that the debtor can sell free and clear of this lien under 11 U.S.C. § 363(f)(2) and (f)(3).

2. A second deed of trust in favor of the United States Department of Housing and Urban Development ("HUD") in the approximate amount of \$20,000.00. The debtor seeks to value HUD's collateral at \$114,000.00 in matter 9 above. HUD opposes the motion asserting a value of \$134,000.00. The amount of this lien is in bona fide dispute. HUD filed a response seeking either a continuance of this motion until the valuation question is resolved or that its lien attach to the proceeds of sale. The latter request is appropriate and is granted. As such, the court finds that HUD too consents to the sale. The court finds that the debtor can sell free and clear of these interests under 11 U.S.C. § 363(f)(2) and (f)(4).

3. A financing statement in favor of Federal Diversified-Home Base/Pacesetter Corp., in the approximate amount of \$3,603.00. Creditor received notice of this motion and did not oppose. A "lack of objection (provided of course there is notice) counts as consent." Futuresource, LLC v. Reuters Limited, 312 F.3d 281, 285 (7th Cir. 2002). The court finds that the debtor can sell free and clear of this lien under 11 U.S.C. § 363(f)(2).

4. Prepetition and post-petition real property taxes in favor of the San Joaquin County Tax Collector. The debtor proposes to satisfy this lien through escrow on the property. The court finds that the debtor can sell free and clear of this lien under 11 U.S.C. § 363(f)(3).

Pursuant to 11 U.S.C. § 363, the debtor is authorized to sell the property to Chetmesa Michelle Nop for \$160,000.00 free and clear of the liens and interests specified above, said liens and interests to attach

to the proceeds of the sale.

Nothing herein allows the debtor to sell free and clear of the judicial lien recorded by AT&T Broadband, Inc./Northern California Collection Service, Inc., of Sacramento, Assignee of Record recorded November 25, 2003. The court cannot approve the sale free and clear of this lien because there is no evidence this creditor was ever served with this motion.

No request for a finding under 11 U.S.C. § 363(m) is made and the court makes no such finding.

The proceeds of sale may not be administered as set forth in the motion. Rather, the net proceeds of sale shall be held by debtor's counsel in his attorney trust account pending further order of the court.

Counsel for the debtor shall prepare an order consistent with the foregoing ruling.

11.	03-92820-A-7 CHRIS & JAMIE DOWNS SB #1 WELLS FARGO BANK, N.A. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 12/22/03 [40]
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Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

As it pertains to movant's interest in the subject personal property, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the movant to dispose of the leased vehicle pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Cause exists for this relief because the debtors have defaulted in making lease payments. The confirmed plan in this case assumed this lease and required the debtors to make all ongoing payments directly to the movant. In addition, there is no equity in the leased subject property and the debtors have not produced any evidence that it is necessary for an effective reorganization or rehabilitation.

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's property is being used by the debtor without compensation and is depreciating in value.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

12. 02-92225-A-13 ROBERT & JOOLET ALVAGI
ASW #1
FAIRBANKS CAPITAL CORP. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/22/03 [47]

Tentative Ruling: The motion is granted in part; adequate protection is ordered as set forth below.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtors (1) pay the January 2004 through April 2004 mortgage payments so that they are received by movant within the grace period, if any, (2) pay an additional \$1,178.44 on or before the last day of January 2004 through April 2004, (3) become completely post-petition current in mortgage payments, including any associated late fees, through post-petition payments on or before April 30, 2004, and (4) pay the January 2004 through April 2004 chapter 13 plan payments to the trustee in a timely manner.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtors default in post-petition mortgage payments from May 1, 2004 through October 31, 2004.

The request for attorney fees is granted. Costs of \$150 are also awarded.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order on EDC Form 3-205, the additional terms of which are hereby incorporated in the ruling. An interactive version of the Form is available on the Court's website. No alterations of or addition to EDC Form 3-205 shall be made unless specifically stated in the ruling.

13. 97-91725-A-13 KEVIN & REBECCA SCHLITZ
DOUGLAS E. NEIL VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/22/03 [68]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

As it pertains to movant's interest in the subject real property, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The court confirmed a plan on May 12, 1999. The plan requires that the post-petition note installments be paid directly to the movant. Movant alleges without dispute that the loan became all due and payable on March 24, 2003 and that debtors have not paid off the loan. Failure to make post-petition payments to a secured creditor as required by a confirmed chapter 13 plan can constitute cause to terminate the stay

under § 362(d)(1). See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985).

Furthermore, this case was filed in April 1997. The original plan was confirmed on June 18, 1997. Thus, the plan should have completed no later than June 2002. Yet this case remains open in January 2004. Debtors' plan has lasted substantially longer than the 60 months authorized by the code. This too constitutes cause for relief from the stay.

The court notes that this case was on the dismissal calendar on August 7, 2002. The trustee's motion to dismiss was conditionally denied. Debtors were to pay off their plan by September 10, 2002, failing which the trustee could submit a declaration and obtain a dismissal. Apparently, the plan was not paid off and no declaration was ever submitted. Accordingly, the court will issue a separate order restoring this case to the dismissal calendar.

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus \$150.00 in costs. These fees and costs may be enforced only against the movant's collateral.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

14.	00-93027-A-13 ROXANNE CIMARRUSTTI-PORASSO AC #2 CHASE MANHATTAN MORTGAGE CORPORATION VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY OR IN THE ALTERNATIVE, FOR ADEQUATE PROTECTION 12/19/03 [37]
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Tentative Ruling: The motion is granted in part; adequate protection is ordered as set forth below.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtor (1) pays the January 2004 through April 2004 mortgage payments so that they are received by movant within the grace period, if any, (2) pay an additional \$518.94 on or before the last day of January 2004 through March 2004, (3) become completely post-petition current in mortgage payments, including any associated late fees, through post-petition payments on or before April 30, 2004, and (4) pay the January 2004 through April 2004 chapter 13 plan payments to the trustee in a timely manner.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtors default in post-petition mortgage payments from May 1, 2004 through October 31, 2004.

The request for attorney fees is granted. Costs of \$150 are also awarded.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order on EDC Form 3-205, the additional terms of which are hereby incorporated in the ruling. An interactive version of the Form is available on the Court's website. No alterations of or addition to EDC Form 3-205 shall be made unless specifically stated in the ruling.

15.	03-91027-A-13 EFREM L. FANENE SJM #2 CITIFINANCIAL MORTGAGE CO. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 12/15/03 [47]
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Tentative Ruling: The motion is granted in part; adequate protection is ordered as set forth below.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtors (1) pay the January 2004 and February 2004 mortgage payments so that they are received by movant within the grace period, if any, (2) become completely post-petition current in mortgage payments, including any associated late fees, through post-petition payments on or before January 31, 2004, and (3) pay the January 2004 and February 2004 chapter 13 plan payments to the trustee in a timely manner.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtors default in post-petition mortgage payments from March 1, 2004 through August 31, 2004.

The request for attorney fees is granted. Costs of \$150 are also awarded.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order on EDC Form 3-205, the additional terms of which are hereby incorporated in the ruling. An interactive version of the Form is available on the Court's website. No alterations of or addition to EDC Form 3-205 shall be made unless specifically stated in the ruling.

16.	02-94034-A-13 CLIFTON F. SIPP & MJN #1 PRISCILLA A. JONES-SIPP FIRST HORIZON HOME LOAN CORPORATION VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 12/22/03 [37] ADEQUATE PROTECTION STIPULATION AND ORDER EOD 12/30/03
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Disposition Without Oral Argument: The court approved an adequate protection stipulation between the parties on December 30, 2003, that resolves this matter. It therefore is removed from the calendar.

17. 03-92435-A-13 MICHELLE L. MYLES
ASW #1
FAIRBANKS CAPITAL CORP. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/19/03 [28]

Tentative Ruling: This matter involves disputed facts that cannot be resolved on declarations. The parties dispute the payment amount and what payments have been made. The parties shall be prepared to discuss on January 20, 2004: (1) a discovery schedule, if necessary; and (2) an evidentiary hearing date.

18. 03-91936-A-13 ALFRED GARGANTILLA
SML #1
BANK OF AMERICA, N.A. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
OR IN THE ALTERNATIVE, FOR
ADEQUATE PROTECTION
12/22/03 [38]

CONV. TO CH 7 EOD 12/19/03

Tentative Ruling: This matter is denied without prejudice or continued with the consent of movant to February 24, 2004 at 2:00 p.m. On December 19, 2004, the debtor converted this case to one under chapter 7. Movant has therefore failed to serve all proper parties with this motion; i.e. the chapter 7 trustee.

So as to provide sufficient notice to the chapter 7 trustee of this LBR 9014-1(f)(1) motion, movant shall serve Mr. McGranahan with the moving papers and all parties in interest with notice of the continued hearing on or before January 27, 2004.

The court will issue a minute order.

19. 02-92137-A-13 MICHAEL & SABRINA PINHEIRO
MPD #1
NATIONAL CITY MORTGAGE CO. VS.

HEARING ON RESTORED
MOTION FOR RELIEF FROM
AUTOMATIC STAY RE DEFAULT
UNDER ADEQUATE PROTECTION
ORDER
12/22/03 [14]

Tentative Ruling: Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The motion is granted to the following extent: Continuation of the automatic stay is conditioned as set forth herein. Termination of the automatic stay is inappropriate under 11 U.S.C. § 362(d)(2) because the value of the subject real property exceeds the total of the liens. There is equity (approximately \$32,181.80) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984).

Termination of the automatic stay under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a plan on December 15, 2003. That plan provides for payment of the pre-petition arrears through the plan. There is no evidence that the plan payments are in default. The debtors' opposition acknowledges the arrearage; provides evidence of two additional payments made since the motion was filed (\$2,680.00 total) and stated an intention to pay an additional \$1,200 on or before January 6, 2004 and become post-petition current by January 31. The court notes that, assuming the January 6, 2004 payment was made, the debtors must pay \$1,815.82 by January 31, 2004 to become post-petition current.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtors (1) become completely post-petition current in mortgage payments, including any associated late fees by January 31, 2004, (2) pay the mortgage payments that come due from February 1, 2004 through the remainder of the plan term so that they are received by the movant within the grace period, if any and (3) pay all remaining chapter 13 plan payments to the trustee in a timely manner.

If the debtors fail to do any of the foregoing, the court will grant movant relief from stay based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtors' counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration of default will consist of a showing that the claimed default did not occur. Any order granting relief shall be served on the debtors, debtors' counsel, the chapter 13 trustee and the holders of all junior liens.

The request for attorney fees is granted. The movant may amend its claim to add attorneys fees equal to the lesser of \$675 or the amount actually billed to be paid through the plan. However, if relief from the automatic stay is granted, the movant may enforce any unpaid portion of the fee award only against the movant's collateral. No costs are awarded because this is a restored motion.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

20. 02-90239-A-13 ROBERTO & MICAELA VEGA
SJM #2
WASHINGTON MUTUAL BANK VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/16/03 [24]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

As it pertains to movant's interest in the subject real property, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to

permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The court confirmed a plan on April 15, 2002. The plan requires that the post-petition note installments be paid directly to the movant. Movant alleges without dispute that the debtors have failed to make at least three (3) post-petition payments. Failure to make regular monthly payments to a secured creditor as required by a confirmed chapter 13 plan can constitute cause to terminate the stay under § 362(d)(1). See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985).

Movant shall serve a copy of the order granting relief on the holders of all junior liens, if any.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus \$150.00 in costs. These fees and costs may be enforced only against the movant's collateral.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

21. 99-95239-A-13 ROBIN A. MORGAN
RLE #1
FORD MOTOR CREDIT COMPANY VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/22/03 [35]

Tentative Ruling: Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle, to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim including any attorney fees awarded herein. Movant alleges that the debtor failed to pay her vehicle registration and the vehicle was impounded. Movant further alleges that it was required to pay \$1,154.00 to recover possession of its collateral. That is cause for relief from the automatic stay.

The debtor's opposition is wholly unpersuasive where it fails to address movant's allegations. Instead, debtor argues that movant is adequately protected through its class 2 treatment and debtor being current on plan payments. However, Class 2 treatment does not free the debtor from having to comply with California laws regarding the registration of the subject vehicle, nor does it excuse her failure to do so.

The "Response of Secured Creditor, Ford Motor Credit Company, to Debtor's Opposition to Its Motion for Relief From Automatic Stay" filed by movant on January 16, 2004 at 10:22 A.M. is late (see LBR 9014-1(f)(1)(iii)) and is stricken pursuant to LBR 9014-1(l).

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's property is being used by the debtor without compensation and is depreciating in value.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

22. 01-94641-A-13 KIM GEISTER
MB #1
WASHINGTON MUTUAL BANK VS.

HEARING ON RESTORED
MOTION FOR RELIEF FROM
AUTOMATIC STAY
6/26/03 [21]

Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this matter.

The motion is denied without prejudice, pursuant to LBR 9014-1(1). No monetary sanctions are imposed.

This motion fails to comply with, inter alia, LBR 4001-1(c) (requiring an information sheet be filed with all motions seeking relief from the automatic stay). This requirement is reiterated in the adequate protection order at page two, lines 20-21.

While the court does not agree that movant's payment history is indecipherable, it does technically violate LBR 4001-1(d)(1)(i) where it fails to show all post-petition payments and other obligations that have accrued. Movant's history which is a screen dump from movant's computer merely shows the payments received from debtor (and the trustee) as well as certain expenditures made. The court's preferred form of payment history is a chart prepared by counsel.

The court will issue a minute order.

23. 03-90741-A-13 CASPER & ELIZABETH RAMIREZ
SPS #1
CAPITAL PACIFIC MORTGAGE VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/29/03

Tentative Ruling: The motion is granted in part; adequate protection is ordered as set forth below.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtors (1) become completely post-petition current in mortgage payments, including any associated late fees on or before January 31, 2004 (\$4,002.28 through Jan. 2004), and (2) pay the January 2004 chapter 13 plan payment to the trustee in a timely manner.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtors default in post-petition mortgage payments from February 1, 2004 through July 31, 2004.

The request for attorney fees is granted. Costs of \$150 are also awarded.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order on EDC Form 3-205, the additional terms of which are hereby incorporated in the ruling. An interactive version of the Form is available on the Court's website. No alterations of or addition to EDC Form 3-205 shall be made unless specifically stated in the ruling.

24. 03-92843-A-13 RORY A. WILBERS
ASW #1
U.S. BANK NATIONAL ASSOCIATION VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/19/03 [27]

Tentative Ruling: The motion is denied. As an initial matter, the motion fails to comply with LBR 4001-1(d)(2). Movant's claim is paid entirely through the plan by the chapter 13 trustee. By implication, any allegation that post-petition payments are not being made is an allegation that debtor has failed to pay his plan payments. As such, movant is required by that LBR to confer with the chapter 13 trustee before the motion is filed and certify as such in the motion. No such certification is present in the moving papers.

Termination of the automatic stay is inappropriate under 11 U.S.C. § 362(d)(2) because the value of the subject real property exceeds the total of the liens. There is substantial equity (approximately \$99,023.36) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984).

Termination of the automatic stay is inappropriate under 11 U.S.C. § 362(d)(1) because the court confirmed a plan on December 15, 2003. That plan provides for payment of the pre-petition arrears and the first post-petition payment and late charge through the plan. There is no evidence that the plan payments are in default. The debtor's opposition provides evidence that the equivalent of five post-petition payments have been made by the chapter 13 trustee's office. These constitute the September 2003 through January 2004 monthly payments. Once a plan or a modified plan is confirmed, the only ground for terminating the stay is a breach of the plan. The disbursement record shows that the plan is not in default. The movant is adequately protected by the confirmed plan.

The court also notes that the payment history shows an additional payment received on July 15, 2004, the date this bankruptcy case was filed. This is most likely a payment made by debtor pre-petition but which was not received until after filing. Movant properly credited this to the first post-petition payment due. Including this payment in the calculus shows that debtor is actually one month ahead.

Because the debtor's plan was not in default on the date this motion was filed, the court finds that the reasonable fee for filing this motion was \$0.00. 11 U.S.C. § 506(b).

Counsel for the debtor shall submit an order that conforms to the court's ruling.

25. 03-93246-A-13 CHARLES M. TAYLOR
AAC #1

HEARING ON MOTION TO
CONFIRM FIRST MODIFIED
CHAPTER 13 PLAN
12/5/03 [23]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

26. 03-93246-A-13 CHARLES M. TAYLOR
RLE #1
FORD MOTOR CREDIT COMPANY VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
AGAINST DEBTOR AND AGAINST A
NONFILING CO-DEBTOR
12/19/03 [26]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the movant to repossess the vehicle, dispose of it pursuant to applicable law, and use the proceeds from its disposition to satisfy its claim. The debtor lists the movant's collateral as a Class 4 claim in his confirmed plan. Movant alleges that the debtor and/or co-debtor have defaulted in making two (2) payments. That is cause for relief from the automatic stay.

The debtor also has no equity in the vehicle and the debtor has not produced any evidence that it is necessary for an effective reorganization or rehabilitation. The uncontested evidence submitted by the movant indicates that the vehicle is worth \$18,150.00, and the debtor owes \$24,257.83, equaling a deficit of approximately \$6,107.83.

The motion is also granted under 11 U.S.C. § 1301(c)(3).

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's property is being used by the debtor without compensation and is depreciating in value.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

27. 03-92261-A-13 DAVID M. RIZO
SSP #1
ROBERT ESTRADA AND DANNY RIZO VS.

HEARING ON MOTION TO
MODIFY STAY TO PERMIT
PROSECUTION OF PENDING SUIT
TO IMPOSE RESULTING TRUST
AND CONSTRUCTIVE TRUST OVER
REAL PROPERTY, AND FOR
PARTITION OF EQUITABLE
INTERESTS
12/19/03 [15]

Tentative Ruling: Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii). The debtor has filed a statement of non-opposition to the relief requested in the motion.

The motion is granted to the extent set forth herein. The automatic stay is modified (1) to allow Stanislaus County Superior Court case no. 316102 (the "State Court Action") to proceed to judgment on the issues of the imposition of a resulting or constructive trust regarding title to the real property and improvements commonly known as 1832 Richard Way, Ceres, CA (the "Ceres Property") and partition of the Ceres Property and (2) to allow execution of any judgment for partition of the Ceres Property. The State Court Action was scheduled for trial October 20, 2003. That trial date was vacated because of the filing of the instant case.

Counsel for the movant shall submit an order that conforms to the court's ruling.

28. 03-91162-A-13 PEDRO ONTIVEROS
MB #1
THE LEADER MORTGAGE COMPANY VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/24/03 [29]

Disposition Without Oral Argument: This matter has been continued to February 3, 2004 at 1:30 p.m. pursuant to court approved stipulation entered January 9, 2004. It is removed from this calendar.

29. 03-91162-A-13 PEDRO ONTIVEROS
MB #2
THE LEADER MORTGAGE COMPANY VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/24/03 [36]

Disposition Without Oral Argument: This matter has been continued to February 3, 2004 at 1:30 p.m. pursuant to court approved stipulation entered January 9, 2004. It is removed from this calendar.

30. 03-91865-A-13 ANTOINETTE SHIRLEY JACKSON SML #1 CALIFORNIA HOUSING FINANCE AGENCY VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY OR IN THE ALTERNATIVE, FOR ADEQUATE PROTECTION 12/19/03 [16]
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Tentative Ruling: The motion is granted in part; adequate protection is ordered as set forth below.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtor (1) pays the January 2004 mortgage payment, including any applicable late charge, so that it is received by movant no later than January 31, 2004, (2) pays the February 2004 mortgage payment so that it is received by movant within the grace period, if any, (3) becomes completely post-petition current in mortgage payments, including any associated late fees on or before February 16, 2004, and (4) pays the January and February 2004 chapter 13 plan payments to the trustee in a timely manner.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtor default in post-petition mortgage payments from March 1, 2004 through August 30, 2004.

The request for attorney fees is granted. Costs of \$150 are also awarded.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order on EDC Form 3-205, the additional terms of which are hereby incorporated in the ruling. An interactive version of the Form is available on the Court's website. No alterations of or addition to EDC Form 3-205 shall be made unless specifically stated in the ruling.

31. 02-93673-A-13 BRUCE & NINA WENDT MPD #1 GMAC MORTGAGE CORP. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY RE DEFAULT UNDER ADEQUATE PROTECTION ORDER (RESTORED MOTION) 9/10/03 [45]
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Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules and the Adequate Protection Order, oral argument would not benefit the court in rendering a decision on this matter.

The motion is denied without prejudice, pursuant to LBR 9014-1(1). No monetary sanctions are imposed.

This motion fails to comply with, inter alia, LBR 4001-1(d)(1)(i) (requiring a complete post-petition payment history be filed with all motions seeking relief from the automatic stay), and LBR 9014-1(d)(2) (requiring the notice of hearing be filed as a separate document). Movant's payment history begins in October 2003 for this 2002 case. The Adequate Protection Order under which this motion is restored required

that a "verified payment history (complying with LBR 4001-1(d)(1)(i))" be filed with the restored motion. Movant's payment history does not so comply.

The court will issue a minute order.

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| 32. | 03-93880-A-13 VICTOR & LAURIE ACEVEDO
MPD #1
NEW CENTURY MORTGAGE
CORPORATION VS. | HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
12/23/03 [28] |
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Disposition Without Oral Argument: The motion is denied as moot because this case was dismissed on January 15, 2004.

The court will issue a minute order.

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| 33. | 03-91781-A-13 SCOTT & LISA QUICK
SML #1
CHASE MANHATTAN MORTGAGE
CORPORATION VS. | HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
OR IN THE ALTERNATIVE,
FOR ADEQUATE PROTECTION
12/22/03 [24] |
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Tentative Ruling: The motion is granted in part; adequate protection is ordered as set forth below.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtors (1) pay the January 2004 mortgage payment, including any applicable late charge, so that it is received by movant no later than January 31, 2004, (2) pay the February 2004 mortgage payment so that it is received by movant within the grace period, if any, (3) pay an additional \$265.39 concurrent with the February 2004 payment, (4) become completely post-petition current in mortgage payments, including any associated late fees on or before February 29, 2004, and (5) pay the January and February 2004 chapter 13 plan payments to the trustee in a timely manner.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtor default in post-petition mortgage payments from March 1, 2004 through August 30, 2004.

The request for attorney fees is granted. Costs of \$150 are also awarded.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order on EDC Form 3-205, the additional terms of which are hereby incorporated in the ruling. An interactive version of the Form is available on the Court's website. No alterations of or addition to EDC Form 3-205 shall be made unless specifically stated in the ruling.

34. 03-92482-A-13 WILLIE W. KINNEY, JR.
PE #1
A.L. FINANCIAL VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
12/22/03 [14]

Tentative Ruling: As an initial matter, the court notes that this motion fails to comply with LBR 9014-1(d)(2) which requires the notice of hearing be filed as a separate document. The combination Notice of Motion and Motion also refers to this motion as being filed pursuant to "LBR 4001-1, Part II." There have been no Part II motions since the court amended the Local Bankruptcy Rules on December 23, 2002. Counsel for movant shall modify his forms to remove reference to this abrogated procedure. A copy of the current local rules of this court is available on the internet, free of charge, at <http://www.caeb.uscourts.gov>. In this instance the defects are waived and the court will address the substance of the motion. But see LBR 9014-1(l).

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle, to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim including any attorney fees awarded herein. The debtor's confirmed plan in Part III(C)(b) requires that he maintain any insurance coverage required by law, contract or security agreement. The security agreement for the subject vehicle requires that debtor maintain insurance. Movant alleges without dispute that the debtor has defaulted by allowing his insurance coverage to lapse. That is cause for relief from the automatic stay.

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's property is being used by the debtor without compensation and is depreciating in value.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

35. 03-90086-A-13 JOE & CINDY MIERA
ASW #1
CITIMORTGAGE, INC. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/19/03 [36]

Tentative Ruling: Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The motion is granted to the following extent: Continuation of the automatic stay is conditioned as set forth below. Termination of the automatic stay is inappropriate under 11 U.S.C. § 362(d)(2) because the value of the subject real property exceeds the total of the liens. There is equity (approximately \$117,341.69) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984).

Termination of the automatic stay under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a plan on October 30, 2003. That plan provides for payment of the pre-petition arrears through the plan. There is no evidence that the plan payments are in default. The debtors' opposition acknowledges the delinquency but seeks time to sell the subject property. Although failure to make payments pursuant to the confirmed plan constitutes cause for relief from the automatic stay, the movant has protection in the property's equity. See In re Mellor, 734 F.2d 1396, 1400 (9th Cir. 1984) ("... the existence of an equity cushion, standing alone, can provide adequate protection.").

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtors (1) pay the February 2004 through June 2004 mortgage payments so that they are received by the movant within the grace period, if any, (2) either become completely post-petition current in mortgage payments, including any associated late fees or complete a sale of the subject property after obtaining court approval by June 30, 2004, and (3) pay the January through June 2004 chapter 13 plan payments to the trustee in a timely manner.

If the debtors fail to do any of the foregoing, the court will grant relief from stay based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtors' counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration of default will consist of a showing that the claimed default did not occur. Any order granting relief shall be served on the debtors, debtors' counsel, the chapter 13 trustee and the holders of all junior liens.

The request for attorney fees is granted. The movant may amend its claim to add attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150.00 to be paid through the plan. However, if relief from the automatic stay is granted, the movant may enforce any unpaid portion of the fee and cost award only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

36. 02-93195-A-13 MICHAEL & SANDRA GILBREATH
RGH #2
CITIMORTGAGE, INC. VS.

CONT. HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/1/03 [24]

Tentative Ruling: Respondent has consented in the opposition to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). Movant did not file within the time for reply a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, movant has also consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(iii).

The motion is granted to the following extent: Continuation of the automatic stay is conditioned as set forth below. Termination of the

automatic stay is inappropriate under 11 U.S.C. § 362(d)(2) because the value of the subject real property exceeds the total of the liens. There is equity (approximately \$9,554.96) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984).

Termination of the automatic stay under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a plan on January 8, 2003. That plan provides for payment of the pre-petition arrears through the plan. There is no evidence that the plan payments are in default. The debtors' opposition provides evidence that payments totaling \$16,073.14 have been remitted to movant. Had all of them been received, it appears the debtors would be post-petition current. However various postal money orders ("PMOs") listed in the opposition do not appear on the payment history (which the court notes is non-compliant because it fails to show all post-petition obligations that have come due, thus complicating the court's task). The PMOs dated January 23, 2003 (totaling \$1,128.88); the PMO dated April 23, 2003 (\$40.00); and the PMO dated October 29, 2003 (\$146.00) do not appear on the payment history. Debtors have provided no evidence that these payments have been received by movant.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtors (1) pay the January 2003 mortgage payment (if not already made), including any associated late charge, so that it is received by the movant on or before January 23, 2004, (2) pay the February 2004 and March 2004 mortgage payments so that they are received by the movant within the grace period, if any, (3) become completely post-petition current in mortgage payments, including any associated late fees by March 30, 2004, and (4) pay the January 2004 through March 2004 chapter 13 plan payments to the trustee in a timely manner.

If the debtors fail to do any of the foregoing, the court will grant relief from stay based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtors' counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration of default will consist of a showing that the claimed default did not occur. Any order granting relief shall be served on the debtors, debtors' counsel, the chapter 13 trustee and the holders of all junior liens.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtors default in post-petition mortgage payments during the period of April 1, 2004 to September 30, 2004. If the motion is restored to calendar: (A) the movant shall file a supplemental declaration, an updated Information Sheet (compliant with LBR 4001-1(c)), verified payment history (compliant with LBR 4001-1(d)(1)(i)), and statement compliant with LBR 4001-1(d)(ii) or (iii) or LBR 4001-1(d)(2), if applicable, in the Modesto Division not less than fifteen calendar days prior to the hearing, (B) the movant shall serve notice of the restored motion (with copies of the required supplemental documentation, detailed above) not less than fifteen calendar days prior to the hearing, plus three days for mailing, (C) pursuant to LBR 1001-1(f), LBR 4001-1(a) and LBR 9014-1(f)(3), opposition, if any, shall be in writing and shall be filed in the Modesto Division and served not less than seven calendar days prior to the hearing, (D) the act of restoring the motion to calendar shall constitute the movant's consent that it is movant's responsibility, if necessary, to

obtain the opposition, if any, from the court's internet case information system and that movant's failure to do so for any reason, including without limitation computer problems, constitutes grounds to deny the restored motion and (E) pursuant to LBR 1001-1(f), no reply shall be permitted or considered.

The request for attorney fees is granted. The movant may amend its claim to add attorneys fees equal to the lesser of \$675 or the amount actually billed plus \$150.00 in costs to be paid through the plan. However, if relief from the automatic stay is granted, the movant may enforce any unpaid portion of the fee and cost award only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

37. 03-94923-A-13 CLENTON & SABRINA BLACKBURN HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL,
CONVERSION OR IMPOSITION OF
SANCTIONS FOR FAILURE OF
DEBTORS AND/OR DEBTORS'
ATTORNEY TO FILE STATEMENT
OF SOCIAL SECURITY NUMBER(S)
12/24/03 [5]

Tentative Ruling: None.

38. 03-94786-A-13 RALPH & NORMA LANGERMAN HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL OR
IMPOSITION OF SANCTIONS FOR
FAILURE OF DEBTORS TO FILE
STATEMENT OF SOCIAL SECURITY
NUMBER
12/17/03 [5]

Disposition Without Oral Argument: The order to show cause is discharged as moot because the case was dismissed in open court on January 7, 2004

The court will issue a minute order.

39. 03-94797-A-13 JUAN MANUEL MONTANEZ HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL
CONVERSION OR IMPOSITION OF
SANCTIONS FOR FAILURE OF
DEBTOR TO FILE STATEMENT OF
SOCIAL SECURITY NUMBER
12/17/03 [7]

Tentative Ruling: None.

40. 03-93700-A-13 BRUCE & KIMBERLY EVENSON
LJB #1

CONT. HEARING ON OBJECTION TO
DEBTORS' PROPOSED CHAPTER 13
PLAN AND REQUEST FOR
DISMISSAL FILED BY PRINCIPAL
MORTGAGE, INC.
11/4/03 [17]

Tentative Ruling: The creditor's objections are overruled.

The creditor's objection to the debtors' lack of good faith is overruled. The debtors have shown sufficient evidence of their good faith in proposing this plan, and thus have met their burden of proof under § 1325(a)(3). Successive bankruptcy filings, standing alone, do not constitute bad faith.

The creditor's objection to the plan not providing for the full arrears claim is overruled. The debtors consented to provide for the creditor's higher arrears claim.

Despite the court's ruling on these objections, the plan was denied confirmation in matter No. 41 on this calendar.

Counsel for the creditor shall submit an order that conforms to the court's ruling.

41. 03-93700-A-13 BRUCE & KIMBERLY EVENSON
RDG #2

CONT. HEARING ON TRUSTEE'S
OBJECTION TO CONFIRMATION
OF PLAN AND MOTION TO DISMISS
CHAPTER 13 CASE
11/12/03 [21]

Tentative Ruling: The trustee's objections to confirmation are sustained in part, overruled in part, conditionally overruled in part, and confirmation is denied, as set forth below. The motion to dismiss is granted. The trustee's objection regarding the insurance policy is overruled. The policy was provided to the trustee prior to the December 16, 2003 hearing on this matter. The liquidation test objection is conditionally overruled if debtors provide for class 7 claims at 100%, plus interest at the federal judgment rate in the order confirming plan. The trustee's feasibility objection for failure to make plan payments raised for the first time at the December 16, 2003 hearing is sustained. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

The trustee's motion to dismiss is granted for unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

42. 01-94001-A-13 DENISE DELONEY
JCK #3

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/9/03 [14]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

43. 03-91701-A-13 CHARLES & DELORES FRANKLIN
FW #2

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/8/03 [43]

Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

44. 03-93003-A-13 FRANK & MICHELLE AGENBROAD
CLH #2

HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF
MANTECA BULLITIN
11/24/03 [36]
AMENDED OBJECTION FILED
12/2/03 [44]

Disposition Without Oral Argument: This objection has been filed pursuant to LBR 3007-1(d)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the objection to claim No. 1 on the court's claims register, filed by Manteca Bullitin (sic), ("Claim") is resolved without oral argument.

The objection is sustained. The debtors question the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim {B.R. 3001(f)}; however, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. The creditor has failed to carry that burden. In this instance, debtors have

provided evidence that this claim was discharged in debtors' prior chapter 7 case (02-93933). Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

Counsel for debtors shall submit an order that conforms to the court's ruling.

45. 03-93003-A-13 FRANK & MICHELLE AGENBROAD HEARING ON OBJECTION
CLH #3 TO ALLOWANCE OF CLAIM OF
VALLEY YELLOW PAGES
11/24/03 [40]

Disposition Without Oral Argument: This objection has been filed pursuant to LBR 3007-1(d)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the objection to claim No. 4 on the court's claims register, filed by the Valley Yellow Pages, ("Claim") is resolved without oral argument.

The objection is sustained. The debtors question the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim {B.R. 3001(f)}; however, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. The creditor has failed to carry that burden. In this instance, debtors have provided evidence that this claim was discharged in debtors' prior chapter 7 case (02-93933). Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

Counsel for debtors shall submit an order that conforms to the court's ruling.

46. 03-91406-A-13 JEFFERY & MICHELLE DUNN CONT. HEARING ON MOTION
FW #1 TO MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
11/5/03 [18]

Tentative Ruling: This matter continued from December 16, 2003 at the request of the parties. Nothing new having been filed, the court reissues its prior ruling.

The trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. §§ 1325(a)(4), (a)(5), and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

47.	01-92407-A-13 FW #1	PAUL ZODY, JR. & DONNA ZODY	CONT. HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN 10/15/03 [31]
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Tentative Ruling: The trustee's objections are sustained in part, the court withholds ruling on part, and the motion to modify is denied, as set forth below.

Respondent has consented in the opposition to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). Movant did not file within the time for reply a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, movant has also consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f) (1) (iii).

The trustee's objection regarding the failure to provide for the entire claim of the Franchise Tax Board is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

48.	01-92407-A-13 FW #2	PAUL ZODY, JR. & DONNA ZODY	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF THE FRANCHISE TAX BOARD 11/25/03 [41]
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Disposition Without Oral Argument: The objection is overruled as moot. The Franchise Tax Board amended this claim on December 15, 2003. It appears as claim number 8 in the court's Claims Register. The claim to which the debtors object is no longer before the court. The court notes that the amended claims appear to consolidate debtor's tax liability onto claim number 9 which substantially conforms to the returns attached to this objection (claim 8 being filed in the amount of \$0.00).

The court will issue a minute order.

49. 01-92407-A-13 PAUL ZODY, JR. & HEARING ON OBJECTION
FW #3 DONNA ZODY TO ALLOWANCE OF CLAIM OF THE
FRANCHISE TAX BOARD
11/25/03 [38]

Disposition Without Oral Argument: The objection is overruled as moot. The Franchise Tax Board amended this claim on December 15, 2003. It appears as claim number 9 in the court's Claims Register. The claim to which the debtors object is no longer before the court. The court notes that the amended claims appear to consolidate debtor's tax liability onto claim number 9 which substantially conforms to the returns attached to the objection at matter 48 (claim 8 being filed in the amount of \$0.00).

The court will issue a minute order.

50. 03-93908-A-13 ELAINE DICKERSON CONT. HEARING ON OBJECTIONS
TRO #1 TO CHAPTER 13 PLAN FILED BY
THE CIT GROUP/SALES
FINANCING, INC.
11/21/03 [18]

WITHDRAWN 1/5/04

Disposition Without Oral Argument: This matter was withdrawn by the objecting creditor on January 5, 2004 and is removed from the calendar.

51. 00-93709-A-13 FREDERICK R. SHAUGHNESSY HEARING ON MOTION TO
RS #1 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
12/15/03 [29]

Tentative Ruling: This motion fails to comply with LBR 9014-1(d)(3) and (f)(1) which requires the notice of hearing to state that written opposition is due fourteen court days before hearing. Debtor's notice of hearing requires written opposition on the date of the hearing. However, because the trustee filed timely written opposition, the court waives the defect. The trustee's objections are sustained, and the motion to modify is denied, as set forth below.

Respondent has consented in the opposition to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). Movant did not file within the time for reply a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, movant has also consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(iii).

The trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtor has failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(1) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

52. 03-91611-A-13 ALBERT & ALMA SATOR
FW #1

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/11/03 [16]

Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

53. 03-93711-A-13 JUDY ANN COONEY
FW #1

HEARING ON MOTION TO
CONFIRM AMENDED CHAPTER 13
PLAN
12/10/03 [37]

Tentative Ruling: The trustee's objections are sustained, and the motion to modify is denied, as set forth below.

Respondent has consented in the opposition to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). Movant did not file within the time for reply a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, movant has also consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(iii).

The trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtor has failed to carry the burden of establishing the requirements of 11 U.S.C. §§ 1325(a)(4) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

In addition, the court notes that the arrears claim filed by class 1 creditor GMAC is \$4,277.23 more than provided for in the plan.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

54. 03-93912-A-13 BLANCA F. OCHOA
SSA #1

HEARING ON MOTION TO
DISMISS CHAPTER 13 CASE AND
OBJECTION TO PLAN FILED BY
GEORGE & ANNE DANTZIG THROUGH
THEIR DAUGHTER JESSICA KLASS,
AS ATTORNEY IN FACT
11/26/03 [11]

Tentative Ruling: The order confirming the debtor's plan entered December 8, 2003 is vacated pursuant to Bankruptcy Rule 9024 and F.R.Civ.P. 60(b)(1). The order was signed and entered in error while this objection was pending. This matter involves disputed facts that cannot be resolved on declarations. The parties shall be prepared to discuss on January 20, 2004: (1) a discovery schedule, if necessary; and (2) an evidentiary hearing date.

55. 03-94317-A-13 ALAN & BRENDA SANTOS
JCK #1

HEARING ON MOTION TO
CONFIRM THE FIRST AMENDED
CHAPTER 13 PLAN
12/18/03 [29]

Tentative Ruling: The trustee's objection is sustained, and the motion to confirm is denied. The attached motions to value are granted, as set forth below.

The debtors failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(5). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

The attached motion to value the collateral of Retail Services/Levitz is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, sectional sofa and coffee center, had a value of \$500.00 on the date of the petition. Thus, \$500.00 of its claim is an allowed secured claim, based on this valuation.

The attached motion to value the collateral of American General is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, furniture, had a value of \$300.00 on the date of the petition. Thus, \$300.00 of its claim is an allowed secured claim, based on this valuation.

The attached motion to value the collateral of Samuels Jewelers is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, bracelet and watch, had a value of \$400.00 on the date of the petition. Thus, \$400.00 of its claim is an allowed secured claim, based on this valuation.

The attached motion to value the collateral of Mitsubishi Retail Services is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, electronics, had a value of \$1,000.00 on the date of the petition. Thus, \$1,000.00 of its claim is an allowed secured claim, based on this valuation.

Counsel for the debtors shall submit an order that conforms to the court's ruling.

56. 01-92020-A-13 RICHARD & POLLY ROBLES HEARING ON MOTION TO
FW #1 VALUE COLLATERAL OF IMPERIAL
BUSINESS CREDIT, INC.
12/12/03 [46]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing.

The motion to value the collateral of Imperial Business Credit, Inc. is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, one bed pak BBI Tube Bender, one bend pak 300-2 3" Die Kit, two bend pak B P12 4 post lift, two bend pak PK CF 2 post lft, one Ammco 4000 bench, one 2500 bench, one 9708 import arbor kit, one 9499 light truck adaptor kit, had a value of \$12,277.48 on the date of the petition. Thus, \$12,277.48 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtors shall submit an order that conforms to the court's ruling.

57. 01-92020-A-13 RICHARD & POLLY ROBLES HEARING ON MOTION TO
FW #2 VALUE COLLATERAL OF AMERICAN
GENERAL
12/12/03 [50]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing.

The motion to value the collateral of American General is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a tables and a recliner, had a value of \$1,525.16 on the date of the petition. Thus, \$1,525.16 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtors shall submit an order that conforms to the court's ruling.

58. 03-93820-A-13 DANNY & LORI BLANCHARD HEARING ON OBJECTION
JCK #1 TO ALLOWANCE OF CLAIM OF
HOUSEHOLD FINANCIAL SERVICES,
INC.
11/25/03 [38]

Disposition Without Oral Argument: Given the service defect, oral argument would not benefit the court in resolving this matter.

The objection is overruled without prejudice. The court requires motions of this kind to be served on the person or entity at the address stated in the claim entitled "Name and address where notices should be sent,"

and at any other address(es) known to the debtors or disclosed in the bankruptcy file, such as a request for notice. Here, the debtors did not serve the secured creditor at the address provided in its October 20, 2003 notice request (ECF-21).

Counsel for the debtors shall submit an order that conforms to the court's ruling.

59. 03-93322-A-13 DANIEL J. HERMAN
RDG #1

CONT. HEARING ON TRUSTEE'S
OBJECTION TO CONFIRMATION
OF PLAN AND MOTION TO
DISMISS
11/12/03 [15]

Tentative Ruling: This matter was continued, at the request of the parties, from December 16, 2003, to allow the trustee an opportunity to review tax documentation provided by the debtor. No new filings have been submitted in this matter.

The trustee's plan objection is overruled, and plan confirmation is granted. The trustee's motion to dismiss is denied, all for the reasons stated below.

The trustee's objection to confirmation is overruled, and the motion to confirm the plan is granted. The basis of the trustee's objection was the debtor's failure to provide requested documentation, which the debtor did. The trustee's original objection having been cured and the trustee having not supplemented his objection based on the new documentation, there is no basis to deny plan confirmation. In the absence of any opposition, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), and 1325(a).

The trustee's motion to dismiss is denied. There is no cause to dismiss this case where the court granted confirmation of the chapter 13 plan.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee.

60. 00-93423-A-13 STEVE & LINDA PEDEGO
SAS #11

CONT. HEARING ON PETITION
FOR AUTHORIZATION TO
REFINANCE RESIDENCE
11/12/03 [31]

Tentative Ruling: This matter was continued, at the request of the parties and the court, from December 16, 2003, to, *inter alia*, allow required notice of the debtors' net sheet.

The motion to incur debt is conditionally granted, subject to (1) the inclusion of the trustee's standard conditions; and (2) payment of net proceeds of the refinance to the trustee from escrow. The trustee may pay claims as provided in the debtors' currently confirmed plan and hold the balance of the loan proceeds until either the debtor confirms a modified plan or further order of the court.

With those conditions, the sale is consistent with the debtors' performance of the confirmed plan.

Counsel for debtors shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

61. 00-93423-A-13 STEVE & LINDA PEDEGO CONT. HEARING ON FIRST MOTION
SAS #12 TO MODIFY CHAPTER 13 PLAN
11/12/03 [37]

Tentative Ruling: This matter was continued, at the request of the parties, from December 16, 2003, to be heard with matter No. 60 on this calendar.

The trustee's objections are conditionally overruled, and the plan is confirmed, with the condition being the order confirming plan state a certain plan length. The properly noticed net sheet shows the debtor can fund the plan with the loan proceeds. In the absence of any other opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

62. 00-91425-A-13 STEPHEN LANCASTER HEARING ON MOTION TO
FW #2 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
12/10/03 [32]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

63. 03-92825-A-13 DANIEL VILLEGAS & CONT. HEARING ON MOTION TO
FW #1 HELEN PEREZ CONFIRM AMENDED CHAPTER 13
PLAN
10/31/03 [26]

Tentative Ruling: This matter was continued from December 16, 2003, at the request of the parties, to allow the debtors an opportunity to submit a declaration in support of their proposed plan.

The motion to confirm is denied. The debtors failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Specifically, this case has been pending since July 14, 2003, and there

is no confirmed plan. The debtors admit to making late proposed plan payments and not making the November 2003 payment at all. Furthermore, the debtors' amended schedule I does not support their ability to make future plan payments. The income generated from work by Mrs. Perez is estimated, and there is no information about her unemployment benefits (such as when they expire). In all, the evidence before the court does not carry the debtors' burden to show the feasibility of their plan.

Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the debtors shall submit an order that conforms to the court's ruling.

64.	03-94226-A-13 RITA L. HICKS RDG #1	HEARING ON TRUSTEE'S OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 12/17/03 [20]
	WITHDRAWN 1/5/04	

Disposition Without Oral Argument: This matter was withdrawn by movant on January 5, 2003, and is removed from the calendar.

65.	03-94226-A-13 RITA L. HICKS RDG #2	HEARING ON TRUSTEE'S OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS 12/17/03 [23]
	WITHDRAWN 1/5/04	

Disposition Without Oral Argument: This matter was withdrawn by movant on January 5, 2003, and is removed from the calendar. The court notes the plan will now be confirmed under the procedures set forth in General Order 03-03.

66.	03-93430-A-7 PAUL ARONSON MSN #1	HEARING ON MOTION TO CONFIRM CHAPTER 13 PLAN 12/2/03 [19]
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Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this motion.

The motion is denied without prejudice, pursuant to LBR 9014-1(1). No monetary sanctions are imposed.

This motion fails to comply with, *inter alia*, LBR 9014-1(d)(6) and (f)(1). The debtor failed to file a copy of his proposed plan, and thus no party has received notice of the terms the debtor seeks to confirm.

A copy of the current local rules of this court is available on the internet, free of charge, at <http://www.caeb.uscourts.gov>.

Counsel for the debtor shall submit an order that conforms to the court's ruling.

67. 00-90231-A-13 LARRY & DEBORAH HOLLINS HEARING ON MOTION TO
FW #5 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/11/03 [55]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

68. 01-90932-A-13 LILLIE RUTH EARNEST HEARING ON MOTION TO
JCK #5 MODIFY CONFIRMED CHAPTER 13
PLAN
11/25/03 [49]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

69. 01-94133-A-13 DENNIS HENDERSON HEARING ON MOTION TO
DWI #3 DISMISS CHAPTER 13, OR IN THE
ALTERNATIVE, CONVERT TO A
CHAPTER 7 FILED BY STANISLAUS
COUNTY DEPARTMENT CHILD
SUPPORT SERVICES, ET AL.
12/4/03 [30]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing.

The motion is granted and the case is dismissed, pursuant to 11 U.S.C. § 1307(c), due to the debtor's material default of two plan terms. Specifically, the debtor has incurred more than \$1,000 in post-petition debt without permission and failed to maintain his required child support payments in violation of Section III(C) (a) and (c).

Counsel for the movant shall submit an order that conforms to the court's ruling.

70. 03-94135-A-13 BRUCE & MAUREEN UTZERATH HEARING ON MOTION TO
FW #1 VALUE COLLATERAL OF RENT A
CENTER
12/12/03 [12]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing.

The motion to value the collateral of Rent-a-Center is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a computer, had a value of \$300.00 on the date of the petition. Thus, \$300.00 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtors shall submit an order that conforms to the court's ruling.

71. 03-91836-A-13 DANNY & SANDRA EMFINGER HEARING ON MOTION TO
JCK #1 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/10/03 [29]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the modified plan filed December 10, 2003 complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

72. 01-91737-A-13 JOSEPH CRUZ CONT. HEARING ON DEBTOR'S
DCJ #3 MOTION FOR DAMAGES UNDER
11 U.S.C. SECTION 362(H)
11/5/03 [76]

Disposition Without Oral Argument: This matter was set for a one-day evidentiary hearing on March 18, 2004 at 9:00 a.m., pursuant to the terms of court's January 8, 2004 order.

This matter is removed from calendar.

73. 02-92637-A-13 DAVID & SUSAN MEDEIROS
JCK #2

HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF
FIDELITY NATIONAL
FORECLOSURE & BANKRUPTCY
SOLUTIONS
11/25/03 [48]

Tentative Ruling: The objection is overruled.

The court's October 8, 2003, amended adequate protection order specifically allowed the creditor to amend its claim "to include Attorney's fees in the amount of \$275.00 for the preparation of the Motion for Relief from the Automatic Stay." Thus, the proof of claim did not exceed the court's authorization by amending its claim to add fees and costs of \$275.00. While the debtors seem bothered by the additional description of itemized costs, this boilerplate description is drafted in the alternative, and there is no basis to find the creditor exceeded its authorization in either amount or nature of the additional fees and costs.

Counsel for the secured creditor shall submit an order that conforms to the court's ruling.

74. 03-93437-A-13 PAUL DAVIS &
FW #1 ELAINE DAVIS-STRATHORN

HEARING ON MOTION
TO MODIFY DEBTORS'
CHAPTER 13 PLAN
12/16/03 [18]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

75. 03-90040-A-13 FLOYD & BRENDA GRAY
LCL #2
FLOYD & BRENDA GRAY VS.

HEARING ON DEBTORS'
MOTION TO AVOID LIEN
12/10/03 [26]

BANK OF STOCKTON

Tentative Ruling: The motion is denied, pursuant to LBR 9014-1(d)(5) and (6).

The debtors did not provide a legal or evidentiary basis to avoid a lien on property they "previously rented for their residence but which they have never owned." The motion clearly states that "The Debtors have no interest in the property referred to in the preceding paragraph and encumbered by the lien." The debtors do not state which of their specific legal exemptions, if any, is impaired by the recorded lien.

However, the debtors elected the exemptions contained in CCP § 703.140(b), which election is in lieu of all other exemptions. Section 703.140(b)(1) allows the exemption of "the debtor's aggregate interest, not to exceed seventeen thousand four hundred twenty-five dollars (\$17,425) in value, in real property...that the debtor...uses as a residence...." The debtors' own motion states that they have no interest in the property subject to the judicial lien.

Counsel is reminded that by presenting a motion to the court he is certifying that, to the best of his knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law. Bankruptcy Rule 9011(b)(2).

Counsel for the debtors shall submit an order that conforms to the court's ruling.

76.	03-90040-A-13 FLOYD & BRENDA GRAY LCL #3 FLOYD & BRENDA GRAY VS. BENEFICIAL CALIFORNIA, INC.	HEARING ON DEBTORS' MOTION TO AVOID NONPOSSESSORY NONPURCHASE-MONEY SECURITY INTEREST LIEN 12/10/03 [30]
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Tentative Ruling: The motion is denied, pursuant to LBR 9014-1(d)(6).

The debtors seek to avoid a non-possessory, non-purchase money, secured lien in certain personal property because their exemption in that property is impaired by the creditor's lien. The debtors have not, however, scheduled or exempted the specific property listed in the detailed security agreement, such as two televisions, stereo, CD player & CD collection, speakers, and a "piano & organ" with a market value of \$4,000. Thus, there is no exemption which is impaired.

The debtors must be specific in the scheduling and exemption of their assets to benefit from a lien avoidance under § 522(f). In re Mohring, 143 B.R. 389, 395 (Bankr. E.D. Cal. 1992). "[I]t is important that trustees and creditors be able to determine precisely whether a listed asset is validly exempt simply by reading a debtor's schedules. Given that the debtor controls the schedules, we construe any ambiguity therein against him." In re Hyman, 967 F.2d 1316, 1319 n.6 (9th Cir. 1992).

The court also notes that the debtors improperly amended their schedule B on February 26, 2003, by only substituting one page of the Official Form B6B (the complete form schedule B). To amend a particular schedule properly, a debtor should complete the entire form schedule and file it as an amended schedule. Official forms are available on the internet, free of charge, at <http://www.caeb.uscourts.gov>.

Counsel is reminded that by presenting a motion to the court he is certifying that, to the best of his knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law. Bankruptcy Rule 9011(b)(2).

Counsel for the debtors shall submit an order that conforms to the court's ruling.

77.	03-90040-A-13 FLOYD & BRENDA GRAY LCL #4	HEARING ON DEBTORS' MOTION TO CONFIRM A MODIFIED CHAPTER 13 PLAN 12/10/03 [34]
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Tentative Ruling: The trustee's objection is overruled, and the motion to confirm is denied for the reasons stated below, pursuant to LBR 9014-1(d)(5).

The trustee's objection to the dividend to Class 7 claims is overruled. The zero percent dividend was fixed at the time of the original confirmation of the plan, and there is no basis before the court to increase that percentage at this point.

The debtors' motion is nonetheless denied. The modification seeks to "avoid the two above-mentioned liens." Liens cannot be avoided by plan modification. To the extent that the motion seeks to alter the treatment of two secured claims based on the anticipated success of the motions at Nos. 75 and 76, it is denied because the court denied those motions.

Counsel for the debtors shall submit an order that conforms to the court's ruling.

78.	03-92640-A-13 ROBERT J. ECKSTEIN FW #1	HEARING ON MOTION TO SELL REAL PROPERTY 12/15/03 [19]
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CASE DISMISSED EOD 12/23/03

Disposition Without Oral Argument: The motion is denied as moot because the case was dismissed December 23, 2003.

The court will issue a minute order.

79.	99-92641-A-13 CHARLIE & LORETTA JCK #1 TEFERTILLER	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF HOUSEHOLD FINANCE CORPORATION/BENEFICIAL FINANCE CORPORATION 11/25/03 [30]
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Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing.

The objection to claim No. 17 on ECF filed by Beneficial Finance Corporation on September 24, 1999, ("Claim") is sustained.

The objection is sustained and the Claim is disallowed as a duplicate of claim No. 19, except to the extent already paid by the trustee.

Counsel for the debtors shall submit an order that conforms to the court's ruling.

80. 02-94244-A-13 KIMBERLY JOANNE SILVA
SF #7

HEARING ON APPLICATION
FOR ALLOWANCE OF
ADMINISTRATIVE CLAIM OF
GARY R. FARRAR, CHAPTER 7
TRUSTEE
12/17/03 [37]

Tentative Ruling: The application is approved for a total of \$4,160 in fees and costs, to be paid as an administrative expense.

On November 12, 2002, the debtor filed a chapter 7 petition, and the debtor voluntarily converted her case to chapter 13 on December 11, 2003. The chapter 7 trustee now seeks compensation for the period of November 12, 2002 through December 5, 2003, equaling \$3,960 as fees, and \$200 as costs for a valuation service on the debtor's residence.

The debtor's opposition is not availing. This court allows chapter 7 trustees to be compensated for their services in converted cases, within the appropriate cap amount. See, In re Hages, 252 B.R. 789 (Bankr. N.D. Cal. 2000). To hold otherwise would be unfair to hard-working trustees who should be encouraged to pursue assets for creditors, regardless of whether the debtors may convert to another chapter under the Code. Id. At 793-94 (citations omitted).

As for the amount of compensation, the debtor has not argued that the sought compensation is unreasonable or exceeds allowed limits (the cap based on the proposed plan would be \$4,950.00), and the court finds in its independent review and in the absence of opposition by the chapter 13 case trustee or United States Trustee, these fees and costs are reasonable and appropriate compensation for actual, necessary and beneficial services.

Counsel for the chapter 7 trustee shall submit an order that conforms to the court's ruling.

81. 02-94244-A-13 KIMBERLY JOANNE SILVA
SF #8

HEARING ON APPLICATION
FOR ALLOWANCE OF
ADMINISTRATIVE CLAIM OF
SUNTAG & FEUERSTEIN AS
COUNSEL TO GARY R. FARRAR,
CHAPTER 7 TRUSTEE
12/17/03 [40]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing.

The application is approved for a total of \$7,604.72 in fees and costs, to be paid as an administrative expense. On November 12, 2002, the debtor filed a chapter 7 petition, and the debtor voluntarily converted her case to chapter 13 on December 11, 2003. The court authorized the employment of counsel for the chapter 7 trustee, effective January 10,

2003. The trustee's attorney now seeks compensation for the period of January 10, 2003 to present, equaling \$6,428 as fees, and \$1,172.72 as costs.

As set forth in the attorney's application, these fees and costs are reasonable compensation for actual, necessary and beneficial services.

The applicant shall submit an order that conforms to the court's ruling.

82. 03-92644-A-13 GEORGE & ANNETTE ANDERSON CONT. HEARING ON MOTION TO
JCK #2 CONFIRM THE FIRST AMENDED
CHAPTER 13 PLAN
11/10/03 [38]

Tentative Ruling: None. This matter was continued from December 16, 2003, at the request of the parties, to be heard with the related lien-avoidance motions.

83. 03-92644-A-13 GEORGE & ANNETTE ANDERSON CONT. HEARING ON MOTION TO
VLC #5 AVOID JUDICIAL LIEN ON REAL
GEORGE & ANNETTE ANDERSON VS. PROPERTY
11/20/03 [41]
JOE FONZI'S HALL OF FAME

Tentative Ruling: This matter was continued, at the request of the court and the parties, from December 16, 2003, to allow the debtors to present additional evidence. The debtors filed additional evidence on January 9, 2004. On January 13, 2004, lien-holder Ford Motor Credit filed evidence which directly contradicted the debtors' evidence and would compel an different result than sought by the debtors. Since, no other party has had an opportunity to respond to Ford's evidence, the court will not issue a tentative ruling and allow opposition to be presented at the hearing.

84. 03-92644-A-13 GEORGE & ANNETTE ANDERSON CONT. HEARING ON MOTION TO
VLC #6 AVOID JUDICIAL LIEN ON REAL
GEORGE & ANNETTE ANDERSON VS. PROPERTY
11/20/03 [45]
FORD MOTOR CREDIT CO.

Tentative Ruling: This matter was continued, at the request of the court and the parties, from December 16, 2003, to allow the debtors to present additional evidence. The debtors filed additional evidence on January 9, 2004. On January 13, 2004, lien-holder Ford Motor Credit filed evidence which directly contradicted the debtors' evidence and would compel an different result than sought by the debtors. Since, no other party has had an opportunity to respond to Ford's evidence, the court will not issue a tentative ruling and allow opposition to be presented at the hearing.

85. 03-92644-A-13 GEORGE & ANNETTE ANDERSON CONT. HEARING ON MOTION TO
VLC #7 AVOID JUDICIAL LIEN ON REAL
GEORGE & ANNETTE ANDERSON VS. PROPERTY
11/20/03 [49]
PROGRESSIVE MANAGEMENT SYSTEMS

Tentative Ruling: This matter was continued, at the request of the court and the parties, from December 16, 2003, to allow the debtors to present additional evidence. The debtors filed additional evidence on January 9, 2004. On January 13, 2004, lien-holder Ford Motor Credit filed evidence which directly contradicted the debtors' evidence and would compel an different result than sought by the debtors. Since, no other party has had an opportunity to respond to Ford's evidence, the court will not issue a tentative ruling and allow opposition to be presented at the hearing.

86. 03-92644-A-13 GEORGE & ANNETTE ANDERSON CONT. HEARING ON MOTION TO
VLC #8 AVOID JUDICIAL LIEN ON REAL
GEORGE & ANNETTE ANDERSON VS. PROPERTY
11/20/03 [53]
STEVEN F. JOHNSON, DC

Tentative Ruling: This matter was continued, at the request of the court and the parties, from December 16, 2003, to allow the debtors to present additional evidence. The debtors filed additional evidence on January 9, 2004. On January 13, 2004, lien-holder Ford Motor Credit filed evidence which directly contradicted the debtors' evidence and would compel an different result than sought by the debtors. Since, no other party has had an opportunity to respond to Ford's evidence, the court will not issue a tentative ruling and allow opposition to be presented at the hearing.

87. 03-93244-A-13 PAUL MOLINA HEARING ON MOTION TO
MSN #2 CONFIRM AMENDED CHAPTER 13
PLAN
12/11/03 [24]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), and 1325(a).

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

88. 00-90750-A-13 JAMIE CASEY
FW #3

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/4/03 [50]

Tentative Ruling: The motion to confirm is denied.

The debtor failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Specifically, the plan is not feasible where it is dependent upon a \$450 contribution by the debtor's mother and there is no evidence as to the reliability or nature of this "contribution" "to make ends meet."

The court's review of the docket shows there have been six trustee notices of default filed in this three year-old case, the last of which was filed on November 17, 2003, and stated the debtor was then delinquent \$540.00 in plan payments. The docket also reveals that the debtor now schedules herself as a 34 year-old woman with a one year-old child, and she states that she is due with another child in March 2004. In her original and first amended schedules I, the debtor stated she was 20 years old and that her sixteen year-old sister was her dependent, for which the debtor's household income included her sister's social security benefit. This strong pattern of plan delinquency and unexplained discrepancy in her stated age, dependents and income also indicates a lack of credibility and feasibility.

Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the debtor shall submit an order that conforms to the court's ruling.

89. 02-91550-A-13 DAVID & DEBORA HILL
DN #3

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/4/03 [29]

Tentative Ruling: The trustee's objection is sustained, and the motion to confirm is denied.

The debtor failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(4). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

90. 00-93751-A-13 FRANK & LINDA RAMIREZ
JCK #6

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/18/03 [41]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

91. 03-94153-A-13 EDIE R. DANIELS
DMG #1

HEARING ON OBJECTION
TO CONFIRMATION OF PROPOSED
CHAPTER 13 PLAN AND
OPPOSITION TO MOTION TO
VALUE COLLATERAL FILED BY
AMERICREDIT FINANCIAL
SERVICES, INC.
12/29/03 [36]

Disposition Without Oral Argument: This matter is continued to February 17, 2004, at 1:30 p.m. to be heard with other timely objections to the debtor's proposed amended plan under General Order 03-03. The docket shows the section 341 meeting was continued to January 21, 2003.

The court will issue a minute order.

92. 00-93454-A-13 FODAY & MARIAMA KAMARA
JCK #11

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/18/03 [82]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

93. 00-91758-A-13 JOHN BIAGI III & HEARING ON MOTION TO
FW #2 TINA BIAGI MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/16/03 [35]

Tentative Ruling: The trustee's objection is sustained, and the motion to confirm is denied.

The debtors failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

94. 99-94658-A-13 RICK & MAGDALENA GUERRERO HEARING ON MOTION TO
RMW #2 CONFIRM AMENDED CHAPTER 13
PLAN
12/12/03 [58]

Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this motion.

The motion is denied without prejudice, pursuant to LBR 9014-1(1). No monetary sanctions are imposed.

The motion fails to comply with LBR 9014-1(d)(3), which requires, *inter alia*, the Notice of Hearing to provide specific information concerning whether written opposition is required, and if so, the procedures for filing that opposition.

Even if this motion was properly before the court, it would have still been denied. The trustee correctly argued that the debtors utilized the wrong plan form. Furthermore, the copies of certain documents are of such a poor quality that some plan terms are unreadable. In the future, the debtors should only submit readable documents. LBR 9004-1(a).

Even if the debtors used the correct plan form, the motion would still have been denied, because it is inaccurate, improper and unsupported by an evidentiary basis. For instance, the plan length is incorrect (states the length is 12 months, but over three years have passed since the case was filed on October 21, 1999), the plan improperly includes additional attorney fees in the Additional Provisions, and there is no factual evidence as to the reason for a modification.

A copy of the current local rules of this court and forms are available on the internet, free of charge, at <http://www.caeb.uscourts.gov>.

The court notes debtors, on January 9, 2004, filed another motion to confirm a plan. Nothing in this ruling shall be interpreted as affecting that motion or its propriety.

The court will issue a minute order.

95. 98-94362-A-13 R. MICHAEL WRIGHT
GY #3

HEARING ON MOTION FOR
CONFIRMATION OF SECOND
MODIFIED CHAPTER 13 PLAN
(AFTER CONFIRMATION)
12/23/03 [66]

Disposition Without Oral Argument: Given the notice defect, oral argument would not benefit the court in rendering a decision on this motion.

The motion is continued February 3, 2004, at 1:30 p.m., pursuant to LBR 9014-1(1). No monetary sanctions are imposed.

This motion fails to comply with, inter alia, LBR 9014-1, Bankruptcy Rule 3015(g) and General Order 03-03 ¶¶ 1(a) & 8(b) (requiring at least thirty-four days notice of a motion to modify a confirmed chapter 13 plan). The court implies no ruling on the substance of this motion to confirm a modified plan in a case filed more than five years ago, on September 8, 1998.

The court will issue a minute order.

96. 01-90763-A-13 JAMES PACHECO, SR. &
FW #4 DIANE PACHECO

HEARING ON MOTION
TO CONFIRM 4TH MODIFIED
CHAPTER 13 PLAN
12/17/03 [66]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

97. 03-94167-A-13 ALLEN W. SANTOS
RLE #1

HEARING ON OBJECTION
TO CONFIRMATION OF DEBTOR'S
CHAPTER 13 PLAN AND TO THE
MOTION TO VALUE ITS
COLLATERAL FILED BY FORD
MOTOR CREDIT COMPANY, DBA
MAZDA AMERICAN CREDIT
12/12/03 [13]

Tentative Ruling: The issues regarding the debtor's alleged bad faith and the parties' varied valuations of the subject vehicle cannot be resolved on declarations. The parties shall be prepared to discuss: (1) a discovery schedule, if necessary; and (2) a hearing date.

98. 02-92668-A-13 VAISIGAGO & MONA UPERESA
FW #4

CONT. HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
11/4/03 [64]

Tentative Ruling: This matter was continued from December 16, 2003, at the request of the parties, to determine if debtors became current. No documents having been filed in this matter, the court reissues the prior tentative ruling.

The trustee's objection is sustained, and the motion to confirm is denied.

The debtors failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

99. 00-91071-A-13 DWIGHT MINKE
FW #2

HEARING ON MOTION TO
MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
12/15/03 [21]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

100. 99-92573-A-13 CALVIN & CORINNA PEMBERTON
FW #3

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/3/03 [47]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

101. 02-92575-A-13 EMMA WESLEY
CLH #2

HEARING ON MOTION TO
MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
12/3/03 [105]

Tentative Ruling: The trustee's objection is sustained, and the motion to confirm is denied.

The reply filed by debtor on January 16, 2004 at 11:14 A.M. is late (see LBR 9014-1(f)(1)(iii)) and is stricken pursuant to LBR 9014-1(1).

The debtor failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). In addition to trustee's objection, the court notes the debtor's current schedules I and J do not support a \$590 per month plan payment. (ECF-22). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

102. 01-90981-A-13 GILBERT & CHRISTINE
FW #4 RAMIREZ

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/15/03 [52]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

103. 03-94085-A-13 JAMES ALAN GRAY
JCK #1

HEARING ON MOTION
TO CONFIRM THE FIRST
AMENDED CHAPTER 13 PLAN
12/17/03 [18]

Tentative Ruling: The trustee's objections are sustained, and the motion to confirm is denied. The attached, unopposed motion to value collateral is granted, as set forth below.

The debtor failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

The attached motion to value the collateral of Crescent Jewelers is

granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, earrings, had a value of \$200.00 on the date of the petition. Thus, \$200.00 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtor shall submit an order that conforms to the court's ruling.

104.	00-92890-A-13 JOHN & MICHELLE VICENTE JCK #7	HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN 12/18/03 [60]
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Tentative Ruling: The trustee's objection is sustained, and the motion to confirm is denied.

The debtors failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(4). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

105.	03-90491-A-13 ABBAS & ADLA MANSOUR FW #1	HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN 12/3/03 [30]
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Tentative Ruling: The trustee's objections are sustained, and the motion to confirm is denied.

The debtors failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(3) and (6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

106.	00-93095-A-13 VIRGINIA VEGAS FW #4	HEARING ON MOTION TO MODIFY DEBTOR'S CONFIRMED CHAPTER 13 PLAN 12/15/03 [43]
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Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

107. 03-93395-A-13 ERNEST GARCIA
FW #4

HEARING ON MOTION TO
CONFIRM AMENDED CHAPTER 13
PLAN
12/08/03 [38]

CASE DISMISSED EOD 12/10/03

Disposition Without Oral Argument: The motion is denied as moot because the case was dismissed on December 10, 2003.

The court will issue a minute order.

108. 03-94595-A-13 LELA M. ROSS
JDL #1

HEARING ON OBJECTION
TO CONFIRMATION OF CHAPTER 13
PLAN FILED BY DOWNEY SAVINGS
AND LOAN ASSOCIATION F.A.
12/15/03 [12]

Disposition Without Oral Argument: This matter is continued to February 3, 2004, at 1:30 p.m. to be heard with other timely objections to the debtor's proposed plan under General Order 03-03. The docket shows the section 341 meeting was concluded on January 7, 2003.

The court will issue a minute order.

109. 03-92100-A-13 JOHN & JENNIFER JARMAN
DRW #1
NOVASTAR MORTGAGE, INC. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
1/5/04 [19]

Disposition Without Oral Argument: The motion is denied as moot because the case was dismissed on January 14, 2003.

The court will issue a minute order.

110. 03-91626-A-13 JOSE & LISA BAUTISTA
DN #1

CONT. HEARING ON MOTION TO
CONFIRM AMENDED PLAN
8/14/03 [29]

Tentative Ruling: This matter was last continued from January 6, 2004, to determine whether the debtors have become current. No filings having been submitted in this matter, the court rules as follows.

The trustee's objections are sustained in part and overruled in part, and the motion to confirm the amended plan is denied, as set forth below.

The trustee's objection regarding the lack of motions to value debtors' two vehicles is overruled. The court already granted two stand alone

valuation motions which cures this objection. The trustee's feasibility objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

111. 01-92161-A-13 ROSE RINES
FW #4

HEARING ON MOTION TO
INCUR DEBT
1/5/04 [66]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

112. 03-91782-A-13 MIKE & BRENDA MCCALIP
FW #1

HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF
DIRECT MERCHANTS CREDIT
CARD BANK
1/6/04 [31]

Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules and the Federal Rules of Bankruptcy Procedure, oral argument would not benefit the court in rendering a decision on this matter.

The objection is overruled without prejudice, pursuant to LBR 9014-1(1). No monetary sanctions are imposed.

This objection fails to comply with, inter alia, LBR 3007-1(d)(2) and Federal Rule of Bankruptcy Procedure 3007, both of which require at least thirty days notice of an objection to claim.

The court will issue a minute order.

113. 03-94484-A-13 DALE J. ALTON, SR.
DMG #1
DAIMLERCHRYSLER SERVICES
NORTH AMERICA VS.

CONT. HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/8/03 [12]

Tentative Ruling: This matter continued from January 6, 2004 at the request of the parties. Nothing new having been filed in relation to this motion, the court reissues its prior ruling.

The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle, to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim, all in accordance with applicable non-bankruptcy law.

The debtor's opposition is unavailing. There is insufficient evidence to show that movant's interest in the subject vehicle is insured.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

114. 02-93692-A-13 RICHARD & CATHERINE TAYLOR FW #2	CONT. HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN 12/1/03 [46]
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Tentative Ruling: This matter continued from January 6, 2004 at the request of the parties. Nothing new having been filed in relation to this motion, the court reissues its prior ruling.

The trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(1) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

115. 99-94658-A-13 RICK & MAGDALENA GUERRERO RMW #3	HEARING ON MOTION TO CONFIRM AMENDED CHAPTER 13 PLAN 1/9/04
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Tentative Ruling: This motion is calendared because movant, in an attempt to cure the defect in matter 94 filed a motion with a new docket control number. This motion is also denied. It is filed on inadequate notice (13 days) and it contains most if not all of the same defects noted by the court in Matter 94 above. The plan is un-confirmable on its face.

The court will issue a minute order.